

## §210.6

(4) Where a Federal payment is to be disbursed through a debit card, stored value card, prepaid card or similar payment card program established by the Service, the Federal payment may be deposited to an account at a financial institution designated by the Service as a financial or fiscal agent. The account title, access terms and other account provisions may be specified by the Service.

(5)(i) Where a Federal payment is to be deposited to an account accessed by the recipient through a prepaid card that meets the following requirements:

(A) The account is held at an insured financial institution;

(B) The account is set up to meet the requirements for pass-through deposit or share insurance such that the funds accessible through the card are insured for the benefit of the recipient by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund in accordance with applicable law (12 CFR part 330 or 12 CFR part 745);

(C) The account is not attached to a line of credit or loan agreement under which repayment from the account is triggered upon delivery of the Federal payments; and

(D) The issuer of the card complies with all of the requirements, and provides the holder of the card with all of the consumer protections, that apply to a payroll card account under the rules implementing the Electronic Fund Transfer Act, as amended.

(ii) No person or entity may issue a prepaid card that receives Federal payments in violation of this subsection, and no financial institution may maintain an account for or on behalf of an issuer of a prepaid card that receives Federal payments if the issuer violates this paragraph.

(iii) For the purposes of this paragraph (b)(5), the term—

(A) “Payroll card account” shall have the same meaning as that term is defined in the rules implementing the Electronic Fund Transfer Act;

(B) “Prepaid card” means a card, code, or other means of access to funds of a recipient; and

(C) “Issuer” means a person or entity that issues a prepaid card.

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(6) The Secretary of the Treasury may waive the requirements of paragraph (a) of this section in any case or class of cases.

[64 FR 17478, Apr. 9, 1999, as amended at 65 FR 18869, Apr. 7, 2000; 73 FR 52584, Sept. 10, 2008; 75 FR 80339, Dec. 22, 2010]

### §210.6 Agencies.

Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 8.7.2, agencies shall be subject to the obligations and liabilities set forth in this section in connection with Government entries.

(a) *Receiving entries.* An agency may receive ACH debit or credit entries only with the prior written authorization of the Service.

(b) *Liability to a recipient.* An agency will be liable to the recipient for any loss sustained by the recipient as a result of the agency’s failure to originate a credit or debit entry in accordance with this part. The agency’s liability shall be limited to the amount of the entry(ies).

(c) *Liability to an originator.* An agency will be liable to an originator or an ODFI for any loss sustained by the originator or ODFI as a result of the agency’s failure to credit an ACH entry to the agency’s account in accordance with this part. The agency’s liability shall be limited to the amount of the entry(ies).

(d) *Liability to an RDFI or ACH association.* Except as otherwise provided in this part, an agency will be liable to an RDFI for losses sustained in processing duplicate or erroneous credit and debit entries originated by the agency. An agency’s liability shall be limited to the amount of the entry(ies), and shall be reduced by the amount of the loss resulting from the failure of the RDFI to exercise due diligence and follow standard commercial practices in processing the entry(ies). This section does not apply to credits received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary as governed by subpart B of this part. An agency shall not be liable to any ACH association.

(e) *Acquittance of the agency.* The final crediting of the amount of an entry to a recipient’s account shall

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constitute full acquittance of the Federal Government.

(f) *Reversals.* An agency may reverse any duplicate or erroneous entry, and the Federal Government may reverse any duplicate or erroneous file. In initiating a reversal, an agency shall certify to the Service that the reversal complies with applicable law related to the recovery of the underlying payment. An agency that reverses an entry shall indemnify the RDFI as provided in the applicable ACH Rules, but the agency's liability shall be limited to the amount of the entry. If the Federal Government reverses a file, the Federal Government shall indemnify the RDFI as provided in the applicable ACH Rules, but the extent of such liability shall be limited to the amount of the entries comprising the duplicate or erroneous file. Reversals under this section shall comply with the time limitations set forth in the applicable ACH Rules.

(g) *Point-of-purchase debit entries.* An agency may originate a Point-of-Purchase (POP) entry using a check drawn on a consumer or business account and presented at a point-of-purchase unless the Receiver opts out in accordance with the ACH Rules. The requirements of ACH Rules 2.1.2 and 3.12 shall be met for such an entry if the Receiver presents the check at a location where the agency has posted the notice required by the ACH Rules and has provided the Receiver with a copy of the notice.

(h) *Returned item service fee.* An agency that has authority to collect returned item service fees may do so by originating an ACH debit entry to collect a one-time service fee in connection with an ARC, POP or BOC entry that is returned due to insufficient funds. An entry originated pursuant to this paragraph shall meet the requirements of ACH Rules 2.1.2 and 3.5 if the agency includes the following statement in the required notice(s) to the Receiver: "If the electronic fund transfer cannot be completed because there are insufficient funds in your account, we may impose a one-time fee of \$ [ ] against your account, which

we will also collect by electronic fund transfer."

[64 FR 17487, Apr. 9, 1999, as amended at 67 FR 17903, Apr. 11, 2002; 69 FR 13189, Mar. 19, 2004; 70 FR 67367, Nov. 7, 2005; 73 FR 52584, Sept. 10, 2008]

### § 210.7 Federal Reserve Banks.

(a) *Fiscal Agents.* Each Federal Reserve Bank serves as Fiscal Agent of the Treasury in carrying out its duties as the Federal Government's ACH Operator under this part. As Fiscal Agent, each Federal Reserve Bank shall be responsible only to the Treasury and not to any other party for any loss resulting from the Federal Reserve Bank's action, notwithstanding Section 11.5 and Article 8 of the ACH Rules. Each Federal Reserve Bank may issue operating circulars not inconsistent with this part which shall be binding on financial institutions.

(b) *Routing numbers.* All routing numbers issued by a Federal Reserve Bank to an agency require the prior approval of the Service.

### § 210.8 Financial institutions.

(a) *Status as a Treasury depository.* The origination or receipt of an entry subject to this part does not render a financial institution a Treasury depository. A financial institution shall not advertise itself as a Treasury depository on such basis.

(b) *Liability.* Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 8.7.2, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section. A financial institution shall not be liable to any third party for any loss or damage resulting directly or indirectly from an agency's error or omission in originating an entry. Nothing in this section shall affect any obligation or liability of a financial institution under Regulation E, 12 CFR part 205, or the Electronic Funds Transfer Act, 12 U.S.C. 1693 et seq.

(1) An ODFI that transmits a debit entry to an agency without the prior